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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

5 MATTHEW G. SILVA,

6 Plaintiff,

7 v.

8 ROB McKENNA, JOHN S. BLONIEN,  
9 DOUGLAS CARR, KIMBERLY FRINELL,  
AMANDA MIGCHELBRING, ELDON  
10 VAIL, DAN PACHOLKE, STEVE  
11 SINCLAIR, CHRIS BOWMAN, CHUCK  
12 PEASE, OFFICIAL JURGENSEN, LINDA  
MICHAEL, DAVID S. ROBERTS,  
13 TAMARA ROWDEN, RONALD  
14 FREDERICK, DEVON SCHRUM,  
LORI SCAMAHORN, DENNIS DAHNE,  
15 KERRI McTARSNEY, CORYDON  
WHALEY, CLINT MAY, CHERYL  
SULLIVAN, and VANESSA COLEMAN,

16 Defendants.

No. C11-5629 RBL/KLS

**REPORT AND RECOMMENDATION**  
**Noted For: January 13, 2012**

17 Before the Court are Plaintiff's motions for orders enjoining his transfer to another prison  
18 and request for a hearing. ECF Nos. 10 and 19.<sup>1</sup> Having carefully reviewed the motions,  
19 Defendants' opposition (ECF Nos. 13 and 21), and balance of the record, the Court finds that the  
20 motions should be denied.

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22 **DISCUSSION**

23 In his complaint, Mr. Silva alleges retaliation for his litigation practices by Washington  
24 State Department of Corrections (DOC) staff, the Washington State Attorney General and  
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26 <sup>1</sup> Included in Plaintiff's first motion (ECF No. 10) is a request for assistance in the service of his complaint. A motion for injunctive relief is not the appropriate avenue to seek such relief. Plaintiff should address this issue in a separate motion.

1 several Assistant Attorneys General. ECF No. 7. At the time he filed his complaint and his  
2 motions for injunctive relief, Plaintiff Matthew G. Silva was incarcerated at the Stafford Creek  
3 Corrections Center (SCCC). He has subsequently been transferred to the Coyote Ridge  
4 Corrections Center. ECF No. 21. In his first motion, Plaintiff requests that the Court issue an  
5 order prohibiting Defendants from transferring him to another DOC facility and to grant him  
6 minimal legal access. ECF No. 10. He claims he was being transferred from SCCC to another  
7 DOC facility in retaliation for filing the complaint in this case. *Id.* at 3. He admits that shortly  
8 after filing his lawsuit, he was involved in an altercation with another offender which caused  
9 both offenders to be placed in segregation. *Id.* However, Plaintiff argues that his subsequent  
10 denial of segregation hearings, legal access and upcoming transfer due to security issues are all  
11 unwarranted. Plaintiff further alleges that such transfer will result in an inability to properly  
12 handle his pending litigation against the DOC. *Id.* at 10.

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14 In his second motion, Plaintiff requests that the Court issue an order to stay his transfer  
15 and also hold a hearing on his motion for injunctive relief. ECF No. 19. In his affidavit, the  
16 Plaintiff alleges he was subject to improper reviews while he was held in administrative  
17 segregation. ECF No. 18.

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19 Plaintiff was transferred to the CRCC on October 27, 2011 due to a “Disciplinary  
20 Problem.” ECF No. 21, Exh. 1 (Declaration of Cherrie Kollmer), Attachment A at 10 (ECF  
21 pagination).

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23 A preliminary injunction is an “extraordinary and drastic remedy” that is never awarded  
24 as of right. *Munaf v. Geren*, 553 U.S. 674, 689-90, 128 S. Ct. 2207, 2219, 171 L.Ed.2d 1 (2008)  
25 (citations and quotation omitted). Instead, the instant motion requires the court to “balance the  
26 competing claims of injury and ... the effect of the granting or withholding of the requested

1 relief.” *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129 S. Ct. 365, 376, 172 L.Ed.2d 249  
2 (2008) (quoting *Amoco Prod. Co. v. Gambell*, 480 U.S. 531, 542, 107 S. Ct. 1396, 94 L.Ed.2d  
3 542 (1987)). A plaintiff seeking a preliminary injunction must establish the following: (1) a  
4 likelihood of success on the merits, (2) a likelihood of irreparable injury to the plaintiff if  
5 injunctive relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4)  
6 advancement of the public interest. *Id.* (citations omitted). This is an “extraordinary remedy  
7 that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Id.* at  
8 376. Moreover, Plaintiff must show more than a mere “possibility” of irreparable harm, but  
9 instead must “demonstrate that irreparable injury is likely in the absence of an injunction.” *Id.* at  
10 375 (emphasis and citations omitted).

12 Plaintiff must show that he is likely to succeed on the merits of his claim, that he will be  
13 irreparably harmed if he is not granted the extraordinary relief he seeks, that the balance of harm  
14 favors him, and that public interest favors granting the relief he seeks. He has not done so.

16 It is well settled that inmates have no constitutional right to be incarcerated in a particular  
17 prison. *Meachum v. Fano*, 427 U.S. 215, 225 (1976).

18 Plaintiff has requested the Court issue an order to stay his transfer and also hold a hearing  
19 on his motion for injunctive relief. In his affidavit, the Plaintiff alleges he was subject to  
20 improper reviews while he was held in administrative segregation. ECF No. 18. However, other  
21 than his conclusory allegations, Plaintiff cites to no authority or provides no adequate reason the  
22 Court should grant injunctive relief ordering him to remain at a specific DOC facility.

24 More importantly, however, Plaintiff has already been transferred to a new facility and  
25 therefore, his issue is now moot. Plaintiff also argues a transfer would disrupt his ability to  
26 litigate his cases, but the Court is unaware that the transfer has disrupted his ability to litigate in

1 this case or any other<sup>2</sup> nor is it aware that a transfer is a valid reason for ordering injunctive  
2 relief. Accordingly, Plaintiff has failed to set forth any adequate basis for preliminary injunctive  
3 relief and an actual hearing on the matter would be a waste of judicial resources.

#### 4 **CONCLUSION**

5 Plaintiff has failed to bring forth any evidence that supports the heavy burden required for  
6 injunctive relief. Further, Plaintiff's request to remain at a specific DOC facility is moot as  
7 he has already been transferred. Accordingly, the undersigned recommends that Plaintiff's  
8 motions (ECF Nos. 10 and 19) be **DENIED**.

9 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
10 fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P.  
11 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.  
12 *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the  
13 Clerk is directed to set the matter for consideration on **January 13, 2012**, as noted in the caption.

14 **DATED** this 20th day of December, 2011.

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19 Karen L. Strombom  
20 United States Magistrate Judge  
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<sup>2</sup> According to Defendants, Plaintiff has at least 11 pending cases against the DOC, DOC staff and/or Attorney General staff.